IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 34315 of 2007(I)

PETITIONER:

USHA.V.J., W/O.SURESH BABU,
AGED 37 YEARS, JUNIOR PUBLIC HEALTH NURSE,
P.H.C. ANGADIKKADAVU, (RESIDING AT USHAS)
ST.JUDE NAGAR, VALLITHODU, P.O.KILIYANTHARA,
THALASSERI TALUK.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENT:

THE MANAGER, FEDERAL BANK LIMITED,
VALLITHODU BRANCH, P.O.KILIYANTHARA.

BY ADV. SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.L.RAM MOHAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 34315 OF 2007 I
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Dated this the 7th day of December, 2007

J U D G M E N T

In this writ petition, petitioner seeks to impugne the steps taken by the 1st respondent Bank for realisation of its dues. It would appear that the petitioner, along with her husband had availed of a house building advance from the 1st respondent Bank mortgaging certain immovable properties. Petitioner submits that her relationship with her husband is not as cordial as it used to be and that she is living alone with her kids. According to her, default has been committed by her husband that consequential recovery action has been initiated against her salary. She contends that while the Bank has chosen to proceed with recovery action, the Bank has ignored to take similar action against the immovable property that has been mortgaged and that, if the Bank takes such action, it will be easier for the Bank to realise its dues. On this basis, petitioner seeks a direction to the respondent Bank to proceed against the immovable property rather than against her meagre monthly income, on which she is maintaining the family.

2. In view of the averments that are made in this writ petition, a copy of the writ petition was directed to be served on the standing counsel for the Bank and he was directed to obtain instructions in the matter. On instructions, he submits that to the information of the Bank, the petitioner's theory of estrangement with her husband is an incorrect one and that the petitioner is very affluent and can afford to repay the loan without any difficulty. According to the Bank, their information is that the mortgaged property itself has been alienated and that the petitioner and her husband are still living together. They are having some difference of opinion with the transferee of the property and therefore the Bank would submit that the direction sought for to proceed against the mortgaged property in this writ petition is an ill-motivated one. It is also contended that the writ petition is not maintainable in so far as the Bank is concerned.

3. Having heard both sides, I am not inclined to accept the theory canvassed by the petitioner. That apart, the respondent being only a scheduled Bank is not amenable to the writ jurisdiction and particularly in a matter like this, where the Bank is only seeking to enforce its contractual rights. In this

case, petitioner and her husband have mortgaged immovable properties to secure loan from the Bank. It is the admitted position that the petitioner is also a surety to the loan. If that be so, it is upto the Bank to choose the options that are available to it. In that process, if the bank has chosen to proceed against the surety, that action of the Bank cannot be faulted. In the result, both on the maintainability and on the merits, I cannot accept the contentions of the writ petitioner.

Writ petition fails and is dismissed.

ANTONY DOMINIC, JUDGE.

Rp